

HISTORICAL REFERENCES AND DOCTRINE PRECEDENTS OF CRIMINOLOGY ON A WORLDWIDE LEVEL

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Abstract

It is a known fact that the object of study of criminology is the "criminal phenomenon", which is considered both from an individual point of view, in relation to the concepts of "crime" and "criminal", and from a collective point of view, for which the concept of "criminality" is observed. A study of the origin and worldwide development of criminology has thus been carried out in relation to these basic concepts. Although a truly scientific approach to criminology has only been developed since the 18th century, there have previously been numerous historical sources and references throughout the entire temporal arc of human evolution that have highlighted the manifest interest in the discipline and the concepts mentioned. Three main schools of thought in modern criminological theory have later been established, covering the period from the mid-eighteenth century to the mid-twentieth century: the classical, the positivist and the Chicago School. The international bodies responsible for criminology have also played a major role, without which this science would not have evolved to the stage it is at today.

Keywords: criminology, criminal law, criminal sociology, crime prevention.

JEL Classification: K14, K33

1. Introduction, used research method and concepts

It is well known the fact that the study subject of criminology is based on the "criminal phenomenon", which is viewed both individually, in relation to the concepts of "crime" and "criminal", and collectively, reason for which we will take into consideration the concept of "criminality"³.

Under such conditions, a study on the global origin and evolution of criminology will be carried out in relation to these basic concepts.

However, the criminal phenomenon, first and foremost, has been and will continue to be primarily a social phenomenon, knowing that "where there are no morals and norms, there is no crime."⁴ Therefore, crime appeared along with the first archaic forms of community and state organization.

The history of this criminality cannot ignore the forms of state organization, which have had a significant impact on any attempt to address a set of deviant behaviors, which have aroused and continue to arouse such a great public concern.⁵

Any intellectual history, as a matter of fact, starts from the perception of what we understand regarding the current state of research. Today, criminology is defined by three major themes:

- a) the constant movement towards a more rigorous science,
- b) a commitment to rigorously tested theories of criminality and criminal behavior,
- c) setting goals to be achieved through crime control policies, based on evidence and ensuring policies for an effective justice.

This was probably best expressed by Edwin Sutherland in 1934, when he defined criminology as "the study of the making of laws, of breaking the laws, and society's reaction to breaking the law."⁶ However, this is not always the way criminology has achieved its goal.

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³ Raymond Gassin, *Criminologie, deuxième édition*, Dalloz, 1990, p. 64 and the following.

⁴ Olof Kinberg, *Basic problems of criminology*, Williams & Wilkins, Copenhagen, 1936, p. 13.

⁵ J. Mitchell Miller, *Criminology - a reference handbook*, Sage Publications Inc., Thousand Oaks, California, 2009, p. 7.

⁶ Edwin Hardin Sutherland, *Principles of criminology*, Chicago, Philadelphia, J.B. Lippincott Company, 1934, p. 25 and the following.

2. Analysis of early criminology

For these reasons it is necessary to return to the roots of criminology before considering the kick-off which is a starting point for our field of study.

Although a truly scientific approach to criminology has been achieved only since the eighteenth century, there have previously been numerous historical sources and references unfolding throughout the entire temporal arch of human evolution that have highlighted the manifest interest in this discipline and for the concepts of 'crime' and 'punishment', 'criminal' and 'criminality'.

a) Human civilization has approached the notions of "crime" and "punishment" ever since antiquity, the way it was approached in Babylon, during the reign of King Hammurabi (1792-1750 BC), who created one of the masterpieces of human creative thinking, "*The Code of Hammurabi*."⁷

In order for a deed to be considered a crime, within the meaning of the code, it had to be committed deliberately. The punishment was differentiated according to the severity of the punishment: the crimes were punishable by death, however, there were situations when the punishment could be redeemed with money. Moreover, priests and dignitaries enjoyed privileges in the case of minor offenses, although when they committed serious offenses they were severely punished. For acts such as incest, the punishment of burning the guilty person alive was applied. The corporal punishment of beating with rods for certain types of crimes⁸ was also brought under regulation.

b) The ancient laws of the neighboring peoples were inspired by the Code of Hammurabi. For example, in Egypt, during the New Kingdom (15th century BC - 10th century BC), the death penalty was applied for rebellion and conspiracy against the state, murder, rape and theft from the tombs of kings. Corrupt judges were sentenced to death by death penalty.

c) Also, references to the concept of "crime" date back to *biblical times*, as it results from the Old Testament when talking about punishment and the proportionality of punishment when "divine commandments"⁹ are not obeyed.

For example, stoning is carefully regulated in the Bible: each person will arm himself with a stone and the main witness gives the signal for execution.

d) In *Jewish law*, crimes such as voluntary homicide, kidnapping, adultery, sodomy, etc. were punished by death penalty. The execution of the death penalty by stoning was entrusted to either the family who had suffered as a result of the crime or the community. If more serious crimes were committed, the punishment was burning at the stake, hanging or impalement at the stake¹⁰.

e) The *great Greek philosophers* of the ancient world also showed a special interest in criminality.

Platon, the first great thinker of antiquity, considered that "punishment cannot be justified in itself as a reaction to the forbidden deed, but must be oriented towards a goal that should constitute the legal and philosophical basis of its application: the prevention of new crimes" (*punitur ut ne pecetur*). "He who wants to punish judiciously does not punish because of the evil deed which is a past action, as it can no longer stop the past deed of being committed, but punishes for the future so that the culprit does not fall into temptation and so that his punishment would contain the others".¹¹

Platon also stated that "the one who kills must accept that he is afraid." A criminologist thus understands that the criminal repression is indispensable. "Wickedness is ignorance of oneself and others." For a criminologist, this idea is an exhortation to an indispensable education in the spirit of positive values.

"Injustice is madness, more than a mistake: it is a stupidity." This statement is understood by a criminologist both as an injustice committed by one criminal against another and as an injustice of

⁷ J. Mitchell Miller, *op. cit.*, p. 3.

⁸ Ovidiu Drâmbă, *Istoria culturii și civilizației* [History of culture and civilization], vol. I, Scientific and Encyclopedic Publishing House, Bucharest, 1985, p. 61 and the following.

⁹ J. Mitchell Miller, *op. cit.*, p. 3.

¹⁰ Ovidiu Drâmbă, *op. cit.*, p. 185.

¹¹ Platon, *Dialoguri*[*Dialogues*], Antet Revolution Publishing House, Bucharest, 2010, p. 78.

judicial errors. Any injustice can cause drama, victimization and often violent reactions¹².

Aristotle referred to crime as the energy that acts against certain people or things and that produces consequences in society. Referring to the murderer, he specified that just as man in his perfection is the noblest of beings, to the same extent, deprived of law and justice, he is the worst of all". It also assessed the importance of the preventive role of punishment, stating that a person commits a crime when he does not expect any punishment or when the benefits of the prohibited deed tip the balance of the punishment.¹³

Among the teachings concerning criminology, given by Aristotle, we note that the human typology forms a great diversity. It is not the need that causes the greatest crimes, but the desire for that which is superfluous. The influence of climate, biological and meteorological environment influences the development of animals. Some schools of criminology have applied this precept to people, adding the social environment as well¹⁴.

f) Criminological references also come from the *philosophical works of ancient China*¹⁵.

According to *Confucius*, the law must be the result of harmony and calculation between man and nature. Human nature is perfectible. Bringing perfection to its point of excellence, working with yourself that never ends, this is what is defining for the "good person", the "quality person", the "honest person". The murderer is the opposite of what a human being should be. *Han Fei Zi* suggested a "Lawyer's Handbook" which recommended the need for a force against criminals.

The spirit of the beauty of ancient Chinese thought is contained in the admirable idea of deterring crime - the "idea of a really wonderful stone": a very beautiful stone, found in nature, is placed in front of the courtroom. The murderer, brought to be tried, is left for some time at the entrance to the hall, facing this stone. Looking at its natural beauty, the murderer might experience a sense of shame for the ugliness of his deed, compared to the beauty of nature, and therefore might repent for the wrong committed. It may seem like a naive idea, but the object to be admired and the method can be updated, leaving the "essential" to be perfected.

g) Last but not least, *the Roman law - a masterpiece of ancient legal thought*, inspired by the thinking of the great philosophers of ancient Greece, also left its mark on criminology. The laws and judgments handed down under them are still the basis of many laws of some countries. Crime was seen as an evil that must be punished.

Cicero analyzes the solidarity between the Ideal Law and Ethics and states that wisdom is the mother of all noble activities. Saving citizens depends on a power that would take into account justice and wisdom. Therefore, this is a fight against crime. The human being aims at infinity through his aspirations but is responsible for his actual actions.

Emperor Marcus Aurelius was the author of many moral philosophies in which he encouraged people to cultivate wisdom and the constraint of passions. He became famous for his idea of desiring "the serenity to accept the things I cannot change, the courage to change the things I can and the wisdom to know the difference."

h) With the emergence of Christianity, in the official Christian thought, elements of interpretation inherited from ancient philosophers are taken. Aristotle's work is acquired at the University of Paris in the meaning of a possible convergence between science and the Christian faith based on revelation. Religious literature aims to define the human being in the world and approaches what will later become the "human sciences".

The best known characters in the field - Gregory of Nyssa, Tertullian of Carthage, St. Augustine speak about order. The only excuse for criminals disturbing order is their ignorance.

According to St. Augustine, there are three functions of excellence: to be, to live and to understand. These functions lead to "human free will" (a concept that will later be enshrined in

¹² Mircea V. Homescu, *Opiniile unor filozofi din antichitate despre crime și criminali* [The opinions of some ancient philosophers about crimes and criminals] in the "Journal of Criminology, Criminalistics and Penology" no. 1-2/2015, p. 155.

¹³ Aristotel, *Politics*, bilingual edition, translation by Alexander Baumgarten with an introductory study of Vasile Muscă, IRI Publishing House, Bucharest, 2001, p. 85.

¹⁴ Mircea V. Homescu, *op. cit.*, p. 152 and the following.

¹⁵ *Ibidem*, p. 156.

criminology). The same author considers order as a peace factor, a basis of morality.

i) Although in the *beginning of the Middle Ages* there was a period of stagnation compared to the conquests of ancient thought, however the Christian religion was going to incite a new spirit that would enlighten the following centuries.

At that time, the church considered illegal acts to be acts that were causing harm and directly harmed it. The church also considered itself the representative of the divine will so that these deeds were appreciated as sins for the guilty and the punishment that was applied to the guilty person had the meaning of an atonement offered by God¹⁶.

3. Modern criminology

As such early edicts on crime and punishment, on murder and crime were intended to inform and help understand social control and justice, the origins of modern criminology date back to the late Enlightenment of the late 18th century, closely linked to the social and intellectual reforms taking place at that time in Western Europe¹⁷. There were three main schools of thought in early criminological theory, thus covering the period from the middle of the eighteenth century to the middle of the twentieth century: classical, positivist, and the Chicago school.

a) The *classical school of criminology* emerged in 1764, when an unnoted Italian lawyer published a book that was soon going to remove its anonymity and become one of the most influential legal treatises of the eighteenth century. The author was *Cesare Beccaria* (1738-1794), and his book was called *Essays on Crime and Punishment*.

Influenced by Enlightenment philosophers, Beccaria tried to create a reform of the criminal justice system to make it more humane and fair. He fought for punishments other than corporal punishment and for the incorporation of the death penalty into the system of criminal punishments in a legal system during the Enlightenment.

The essays challenged the traditional notion according to which the foundation of the legal system was religion and that the cause of crime was the fall from grace (the devil). Instead, Beccaria offered the notion that states that crime is a chosen result (the action of "free will") and that crime was selected when the rewards of the crime outweighed the suffering resulting from the commission of the crime.

Another prominent representative of the positivist school was *Jeremy Bentham* (1784-1832) who intertwined the criminal sciences with the morals of the period. In essence, in its meaning, if the consequences of an action are good, then the act is moral and if the consequences are bad then the act is immoral. In conclusion, the crime was also considered an immoral act. That is why Bentham was the promoter of many proposals to improve British criminal law, made on the basis of the principles of morality and law and less for social or religious reasons.

The *classical school of criminology* evolved brilliantly from Cesare Beccaria and Jeremy Bentham and reached its peak thanks to the work of *Francesco Carrara*¹⁸ (1805-1888), respectively for his fundamental contribution to the elaboration of "rational principles" intended to act as references to deontological level regarding the entire system of criminal disciplines.

b) On the other hand, in 1876, another Italian, this time a doctor, published a book that would transform the way criminals were perceived by other people. It is about *Cesare Lombroso* (1835-1909), *the founder of the positivist school*, who wrote *The Criminal Man* and in which he recounted his observations about criminals while working as a doctor at a local prison.

In the first edition of this book, the author noted that criminals had physical characteristics that resembled more those of animals than those of the evolution of the human species.

The work being written just 17 years after the publication of Charles Darwin's work (1859) -

¹⁶ Tudor Amza, Cosmin Petronel Amza, *Criminologie. Tratat de teorie și politică criminologică* [Criminology. Treatise on criminological theory and policy], Lumina Lex Publishing House, Bucharest, 2008, p. 17.

¹⁷ J. Mitchell Miller, *op. cit.*, p. 3 and the following.

¹⁸ Vintilă Dongoroz, *Drept penal* [Criminal Law] (reissue of the 1939 edition), Tempus & Romanian Association of Criminal Sciences Publishing House, Bucharest, 2000, p. 54.

On the Origin of Species (which introduced the notion of "evolution" in scientific and popular thinking), Lombroso explained crime through this theory as representing human behavior through reference to previous forms of development. Their physical appearance and evolution signaled their inferior intellect and less moral development. Crime was thus considered a product of this underdevelopment.

Enrico Ferri (1856-1929) was considered the founder of the school of modern criminology together with Cesare Lombroso and at the same time the creator of the positivist school of criminal law and criminal sociology. The author highlighted the influence of physical and social factors in the analysis of the criminal and considered that the crime should be analyzed as a legal fact, depending on the offender, considered to be the main character of social justice. Through his analyzes, he penetrated the personality of criminals, emphasizing the psychological aspect of the minds of criminals¹⁹.

His main work - "Criminal Sociology", incorporated a set of disciplines such as penitentiary science, criminal anthropology and last but not least, criminal law.

Raffaele Garofalo (1851-1934), considered the second disciple of Cesare Lombroso after Enrico Ferri, rejected the doctrine of free will (promoted by the classical school) and argued that the analysis of crime can be achieved only by scientific methods. The author tried to formulate a sociological definition of crime in which to define those acts considered dangerous to society and to be punished.

These deeds were considered in Garofalo's opinion as "natural crimes", which affected the two altruistic feelings common to all members of society, namely probity and piety. From this perspective, crime was considered an immoral act that harmed society²⁰.

On the other hand, the research of Cesare Lombroso, Enrico Ferri and Raffaele Garofalo focused mainly on the identification and study of criminogenic factors, but also took into account the criminal policy plan following the development of the preventive model of social reaction against crime. Due to the fact that they achieved the methodological replacement of the metaphysical system of analysis with a scientific, deterministic system, their theoretical orientation was called *the positivist school*²¹.

c) Along with the positivist school, *other currents in criminology also manifested themselves, but also in the positivist realm*²². These are:

- *the sociological school* (Franco-Belgian or Lyonnais) characterized by giving a quasi-exclusive preponderance to social factors; the notable representatives of this current were Alexandre Lacassagne, Leonce Manouvrier, Gabriel Tarde, Joly Henri etc.

- the psychiatric school attributed the genesis of the crime to some psychic anomalies due to which the other criminogenic factors become dangerous; these abnormalities, as appropriate, are either congenital (congenital) or acquired (occurring). The notable representatives of this school were Henry Maudsley, Prosper Despine, James Thomson, Cristopher Magno, etc.

d) Between the orientation of the classical school and that of the positivist school there was a mixed ideology current that combined the two theories and thus created the *eclectic doctrine*. The following belong to this doctrine:

- *the third Italian school* ('terza scuola' or 'critical school') which combined the positivist conception of the natural etiology of crime with the classical conception of moral responsibility and which acknowledged the preventive measures in addition to the afflictive nature of punishment. The representatives of this school were Bernardino Alimena and Emanuele Carnevale.

- *the political-criminal doctrine* conceived by Franz von List and shared by Adolphe Prins

¹⁹ Enrico Ferri, *Criminal Sociology – The Positive School of Criminal Law*, Revista Pozitivă Penală și Penitenciară, [Positive Criminal and Penitentiary Journal], Bucharest, 1934 and Enrico Ferri, *Principles of Criminal Law, vol. I - philosophical part, the delinquent*, Revista Pozitivă Penală și Penitenciară, [Positive Criminal and Penitentiary Journal], Bucharest, 1940, both works translated by Petre Ionescu Muscel.

²⁰ Raffaele Garofalo, *Criminology*, University of California Libraries, 1914.

²¹ Gheorghe Nistoreanu, Constantin Păun, *Criminologie*, [Criminology], Didactic and Pedagogical Publishing House, Bucharest, 1995, p. 23.

²² Vintilă Dongoroz, *op. cit.*, p. 55 and the following.

and JA van Hamel who founded in 1889 the "International Union of Criminal Law" (transformed after the First World War into the "International Association of Criminal Law") and involved in its foundation, resulting in the politico-criminal view, which was often eclectic, as it combined the classical system of legal repression with the system of positivist doctrine, which attributed to crime a natural and social causality.

From this perspective, the repression preserves its legal character, its finality having to be the special prevention, ie the fight against the factors that generated the criminality of the criminal.

- *the humanist doctrine* founded by Vincenzo Lanza aimed to reconcile not only the two currents mentioned above in what they had as acceptable but also to reconcile criminal policy with moral conceptions. Keeping the legal character of repression, Lanza accepts the psychological monogenesis of the crime and as a consequence, he considers that the punishment must aim at re-educating the offender.

- *the unitary doctrine*, represented by Giuseppe Sabatini, aimed at combining the classic concept of imputability (psychic instead of moral) with the positivist concept of danger, admitting that in addition to punishment there must be safety measures.

- *the pragmatic doctrine* founded by Quintiliano Saldana made up an orientation close to the politico-criminal doctrine, characterized by the influence of pragmatic theories according to which only the practical results obtained can confirm the value of a measure; therefore, even in the fight against crime, the punishment must be shaped by the influence it has on the convict.

e) The dispute between the classical and the positivist school, fierce at the beginning, would gradually lose not only its vigor but also its reason for being. This is also due to the fact that in the first half of the twentieth century *the Law school* was born (also called "*legal technology*") that separated criminology from criminal law, which is also a fruit of the evolution of criminal science.

Through this separation implicitly it was recognized that the classical school was right when it considered crime and punishment as separate legal entities, otherwise recognized as such in criminal law; it was also recognized the importance of researching crime and criminals from a natural and social point of view, but also within a separate discipline, namely criminology.

The notable representatives of this school were Vincenzo Manzini, Arturo Rocco, Alessandro Stopato etc.

Although the tendency was to reunify these two schools (classical and positivist) as they targeted the three fundamental establishments of criminal law - the offender, crime and punishment, they remained criminalists and criminologists consistent with these two schools, which led to the *emergence of neo-classicism*, respectively *neo-positivism*, as the followers embraced the ideology of one of these two schools. *The neoclassical school* followed the classical school and brought with it some revisions. First, this way of thinking suggests that people may be driven by behavior, which may be irrational. It also suggests that the world is imperfect and therefore there will always be mistakes. Self-defense is also included in the school of neoclassical thinking. Famous neoclassical criminologists include Raymond Saleilles, author of „The Individualization of Punishment”, and his professor Gabriel Tarde.

Furthermore, in the first half of the twentieth century *the school of neopositivist thought* revived the *research of criminal anthropology*, both from a bio-physiological point of view due to endocrinology research conducted on criminals (conducted by N. Pende and G. Vidoni etc.) and those related to the constitution of delinquents (undertaken by Di Tullio, Mantalbano, etc.), as well as from a *psychological point of view*, through research on characterology (Di Sanctis) or psychoanalysis (Sigmund Freud)²³.

f) On the other hand, starting with the 1920s, American criminology was born with the establishment of the *Chicago School*, represented by Robert E. Park and Ernest Burgess, the third great important current in criminology.

They linked criminology to sociology and provided research on concentric areas or areas in transition where people tend to be more criminally active than others. By adding the researches of

²³ *Ibidem*, p. 57.

Henry McKay and Clifford Shaw, especially on juvenile delinquents, a new study of social ecology has been developed. The Chicago School of Thought in Criminology has established through research that crimes tend to be taught by older criminals whom people may be associated with either personally or professionally²⁴.

Immediately after this reference, criminology appears as an independent branch at a couple of American universities: the University of Berkeley-California and Michigan State University. It should be noted that these university disciplines arose rather from the need to professionalize police officers and less motivated by the explanation of criminal behavior.

Gradually, however, criminology expanded its scope of research so that in the 1950s this field of study at Florida State University covered the causes of crime, policing, punishment, and criminal law, with a focus on science and research, in a program which will serve as a model for other universities and research institutes in the country²⁵.

4. Involvement of international bodies in criminology

It is important to emphasize the role of international bodies with responsibilities in the field of criminology, without which this science would not have evolved at this current stage.

a) First of all, we mention the role and importance of the *International Society for Criminology* (ISC), founded in Rome, Italy, in 1937. It is a world organization of utmost importance in the field of criminology and criminal justice.

This society promotes crime prevention as well as improved procedures used by criminal justice systems. Therefore, its activities focus on both scientific and practical issues²⁶.

It is also a non-governmental organization and many of its members hold leadership positions in their countries and in international institutions. The International Society for Criminology is one of the most active and influential academic associations, a leader in addressing the challenges and problems posed by crime and deviance and finding solutions that also fully respect human rights and democratic values.

The World Congresses of Criminology have been held under the auspices of the International Society of Criminology since 1938. During this century, congresses were held in Rio de Janeiro-Brazil (2003), Philadelphia-USA (2005), Barcelona-Spain (2008), Kobe-Japan (2011), Monterrey-Mexico (2014), New Delhi-India (2016) and Doha-Qatar (2019). All were successful, were very popular and well covered by the media.

b) Secondly, the contribution of the *Commission on Crime Prevention and Criminal Justice* (CCPCJ) and a functional commission of the United Nations Economic and Social Council (ECOSOC) headquarter in Vienna, illustrating the evolution of criminology worldwide, over the last period of time.

The Commission serves as the main body guiding the activities of the United Nations in the fields of crime prevention and criminal justice²⁷.

In 1992, the committee was reformed again, for the last time, into the body that can be seen today, namely the Commission for Crime Prevention and Criminal Justice. Its membership has been increased to 40 to be distributed on the basis of a fair geographical distribution, with members serving three-year phased periods.

Ultimately, in 2006, the mandate of the commission was amended to allow it to act as the governing body of the UN Office on Drugs and Crime (UNODC), and at the same time to approve the budget of the UN Fund for Crime Prevention and Criminal Justice.

Among the most recent activities in the field of criminology worldwide, with an impact on

²⁴ Roufa Timothy, *Criminology - the Study of Crime, Causes and Consequences*, July 2020, available at <https://www.thebalancecareers.com/what-is-criminology-974589>, consulted on 1.10.2021.

²⁵ J. Mitchell Miller, *op. cit.*, p. 25.

²⁶ Document available on the Internet at <https://intercrim.com/about-isc>, consulted on 1.10.2021.

²⁷ Document available on the Internet at https://ro.wikiquibe.net/wiki/United_Nations_Commission_on_Crime_Prevention_and_Criminal_Justice, consulted on 1.10.2021.

future directions of action, we mention the 14th United Nations Congress on Crime Prevention and Criminal Justice held in Kyoto (Japan) between 20 and 27 April 2020. The main theme of the congress was "Advancing crime prevention, criminal justice and the rule of law: towards the achievement of the 2030 Agenda" which thus outlined several principles and directions of action in the work of crime prevention and control.

5. Conclusions

We can summarize in conclusion that the separation of criminology from other criminal disciplines, its transformation into a scientific discipline and its adaptation by each state to their own national needs and necessities have made this discipline one of the most dynamic social sciences and certainly the science with the fastest rise.

At present, criminology is based on clear foundations of devotion to scientific rigor and to the interdisciplinary theory of crime and, at the same time, to improving the activity and righteousness of the criminal justice system. It is a science built on the shoulders of several personalities, among the most important being Beccaria and Lombroso.

Few major initiatives in criminal law and criminal justice have been developed without the significant involvement of criminology. Investigation and analysis of crime, streamlining policies to prevent and combat crime, hearing and protecting witnesses are among the measures in which criminology has played a significant role.

In conclusion, it can be stated that the science of criminology stands out from the other criminal sciences and will be considered a special science as long as it continues to be rigorous in methods, interdisciplinary in approach and guided by a devotion to justice²⁸.

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²⁸ J. Mitchell Miller, *op. cit.*, p. 30.